

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLIFF LONG,)
)
Plaintiff,) 4:07CV3015
)
v.)
)
BURLINGTON NORTHERN AND SANTA FE RAILWAY, CO.,) MEMORANDUM AND ORDER
)
)
Defendant.)
)

Defendant has filed a motion to compel responses to discovery requests. No response to the motion has been filed and the time for doing so has passed. I shall, therefore, grant the motion.

In addition, the provisions of Fed. R. Civ. P. 37(a)(4) require that when such a motion is granted, the court "shall" impose expenses and fees unless the party opposing the motion shows its position on the motion to have been "substantially justified." Plaintiff's failure to respond to the motion is also a failure to make a showing that the position of the plaintiff in the matter was "substantially justified." I therefore must also impose expenses and fees.

Defendant has also filed a motion seeking an extension of time in which to file a motion for summary judgment, claiming that plaintiff's responses to the pending discovery requests are necessary to prepare its motion for summary judgment. I shall grant that request.

IT THEREFORE HEREBY IS ORDERED:

1. The motion to compel, filing 17, is granted, and the plaintiff shall, within ten days, serve answers to the pending interrogatories and responses to the pending requests for production of documents.

2. The defendant is granted its expenses, including attorneys fees, in bringing this matter to the court. Counsel shall confer and in the event they are unable to agree on the amount to be awarded or upon who should bear that expense as between plaintiff and his counsel, defendant's application for fees and expenses shall be filed, supported by appropriate affidavits on those questions, and further supported by brief submitted to the undersigned, within fourteen days of this order. Plaintiff shall have ten days thereafter to submit his response and file appropriate affidavits in opposition. In the event either side desires a hearing on this question, request therefor shall be made in the application or response, as applicable. In the absence of any response to this order by either plaintiff or defendant regarding the matter of fees and expenses, the sum of \$500.00 will be awarded.

3. The clerk shall make any award of attorneys fees and expenses herein a part of any judgment eventually entered in this case unless the parties file a statement with the clerk advising that the award of fees and expenses was paid prior to judgment.

4. The defendant's motion for extension of time to file motion for summary judgment, filing 21, is granted, and the defendant is given until September 21, 2007 to file its motion for summary judgment.

DATED this 21st day of August, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge